

This case was previously before the Board. Appellant, a 46-year-old letter carrier, has an accepted claim for left ulnar neuropathy and left brachial neuritis, which arose on February 4, 2000. On August 8, 2006 the Office granted a schedule award for eight percent

impairment of the left upper extremity.¹ By decision dated May 31, 2007, the Board set aside the schedule award and remanded the case for further medical development.²

In a June 27, 2007 report, Dr. John W. Lamb, a Board-certified orthopedic surgeon and Office referral physician, found four percent impairment of the left upper extremity due to sensory deficit involving the ulnar nerve. According to him, appellant reached maximum medical improvement by January 1, 2001, which was approximately three months after undergoing surgery.³

In a decision dated July 16, 2007, the Office denied appellant's claim for a schedule award. It found that appellant's "condition [had] not yet reached a fixed and permanent state...." On appeal, the Board set aside the July 16, 2007 decision. The Board noted that contrary to the Office's finding, there was evidence indicating appellant had reached maximum medical improvement.⁴

On remand, the Office referred the case record to its district medical adviser, Dr. Howard P. Hogshead, a Board-certified orthopedic surgeon. In a June 16, 2008 report, Dr. Hogshead concurred with Dr. Lamb's finding of four percent impairment of the left upper extremity. He also noted that appellant reached maximum medical improvement on January 1, 2001. Additionally, Dr. Lamb was asked to "indicate whether there [was] an additional permanent functional loss of use of the [left upper extremity], less the eight percent previously paid." He wrote "No" in the margin adjacent to the Office's instructions.

By decision dated August 18, 2008, the Office awarded an additional 4 percent impairment, for a total left upper extremity impairment of 12 percent.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁵ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform

¹ The Office relied on the June 8, 2006 impairment rating of Dr. James W. Dyer, a Board-certified orthopedic surgeon and district medical adviser, whose eight percent impairment rating was based on Grade 4 motor and sensory deficits of the left ulnar nerve, below elbow.

² Docket No. 06-2097 (issued May 31, 2007). The Board found that Dr. Dyer's opinion was not sufficiently rationalized. It was also unclear how he concluded that appellant reached maximum medical improvement on March 23, 2006.

³ The Office had authorized a September 27, 2000 left ulnar nerve transposition.

⁴ Docket No. 07-2340 (issued June 6, 2008). The Board's May 31, 2007 and June 6, 2008 decisions are incorporated herein by reference.

⁵ For a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2006).

standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁶ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁷

The Act and implementing regulations provide for the reduction of compensation for subsequent injury to the same schedule member.⁸ Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.⁹

ANALYSIS

Appellant has not submitted evidence of an impairment in excess of the combined 12 percent left upper extremity awards he has already received. In fact, it is questionable whether appellant even has a 12 percent left upper extremity impairment. The eight percent award appellant received in August 2006 was based on combined motor and sensory deficits of the ulnar nerve “below elbow.” The most recent four percent award was premised on a sensory deficit of the left ulnar nerve “below the forearm.” Both Dr. Dyer and Dr. Lamb identified Table 16-15, A.M.A., *Guides* 492, as support for their respective awards.

It appears appellant may have actually been compensated twice for the same sensory deficit of the ulnar nerve. Moreover, Dr. Hogshead, the latest Office medical adviser, was asked to comment on whether “there [was] an additional permanent functional loss of use of the [left upper extremity], less the eight percent previously paid.” Although the question was not artfully drafted, the gist of the Office’s inquiry was whether appellant had a greater impairment than the previous award of eight percent. Dr. Hogshead’s response was an unequivocal “No.” Despite his response, the Office awarded an additional four percent impairment of the left upper extremity. To the extent the Office disagreed in part with Dr. Hogshead’s opinion, the basis for any presumed disagreement is not readily apparent from the August 18, 2008 schedule award.

CONCLUSION

The evidence does not establish entitlement to a schedule award greater than already awarded.

⁶ 20 C.F.R. § 10.404 (2008).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁸ 5 U.S.C. § 8108; *see* 20 C.F.R. § 10.404(c).

⁹ 20 C.F.R. § 10.404(c)(1), (2).

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board